

**FLATHEAD COUNTY PLANNING BOARD
WHITEFISH ZONING WORKSHOP MINUTES
OCTOBER 15, 2014**

**CALL TO
ORDER**

A workshop of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were, Noah Bodman, Jim Heim, Greg Stevens, Ron Schlegel, Gene Shellerud, Tim Calaway and Jeff Larsen. Marie Hickey-AuClaire had an excused absence. BJ Grieve, Erik Mack and Rachel Ezell represented the Flathead County Planning & Zoning Office.

There were approximately 6 people in the audience.

Larsen reviewed the history of the options document concerning zoning in the previous Whitefish inter-local agreement area (donut).

Grieve summarized when and where the document was requested by the board and when it was made available to the public. (See attached)

**PUBLIC
COMMENT**

Mayre Flowers, 35 4th Street West, Citizens for a Better Flathead, appreciated the chart and had some questions about the document and the process. She was not clear where the board was in the process of a report being drafted justifying interim zoning in the previous donut area. She would like that clarified for the public. She asked what statute the board was relying on under option one to let the interim zoning expire and have no zoning in place. That was her interpretation of the chart and if she was wrong, she asked for clarification. The board had an obligation to work in a cooperative manner with the city of Whitefish concerning planning. She thought it was important to see that in the options and felt it was most closely reflected in option three. It was important to have criteria of what action the board was proposing, how it would comply with the statute and the zoning put in place would comply with the existing municipality in the area. For the public's benefit, it would be nice to see some maps that accompany the options so the public could understand from a visual perspective what was being proposed under various options. She looked forward to hearing the discussion and thanked the board for having the option to speak.

Dave Taylor, Planning Director for the City of Whitefish, wanted to reiterate from his letter submitted to the board, Whitefish preferred option three which entailed working somewhat within the existing Growth Policy, preferably 3c. He did not expect the board to adopt the City of Whitefish's policy whole heartedly but the future land use map was much closer to what the existing current uses were and the development which had occurred and it was based on the 1996 map but had a lot of the improvements which had happened since 1996. He wondered if anyone had talked with Dan Graves at Whitefish Mountain Resort concerning letting the current zoning lapse to see the impact on all the millions of dollars invested in their development plans.

Rebecca Norton, 530 Scott Avenue, liked option three. She wanted the board to consider asking the Whitefish city citizens to be a part of the listening session because the board represented them as well as the people currently living in the former donut area. Several people living on the city perimeter of the donut area were upset by the deregulation which had occurred. She suggested a listening session which included both city residents and county residents. She wanted the board to keep an open mind they were one community. There was a lot investment in whatever the board decided. She was not in favor of option one because she was not sure it could be legally done. There were still high property values in Whitefish and she wanted the board to consider people who had bought into the community, had invested for years and the impact of having an all-inclusive resort plopped next to them. She wanted the process to be a healing process and the board was informed enough to realize the direction they recommended could harmonize a divisive situation.

**DISCUSSION OF
THE 'RURAL
WHITEFISH
PLANNING AND
ZONING
OPTIONS
ANALYSIS'
REQUESTED BY
THE PLANNING
BOARD AT THE
OCTOBER1,
2014
WORKSHOP**

Larsen and Grieve discussed how to answer questions raised during public comment.

Grieve said within 30 working days of adopting interim zoning, the county initiates a study or investigation to verify an emergency exists and to identify the facts and circumstances that constitute the emergency. The report would identify potential options for mitigating an emergency and the course of action the governing body intends to take, if any, during the term of the interim zoning district to mitigate the emergency. The study or investigation had been initiated and did not have to be completed until such time as the board prepared an extension of the interim agreement. He continued to read from MCA

**AND
DISTRIBUTED
TO PLANNING
BOARD
MEMBERS AT
THE OCTOBER
8, 2014
REGULAR
MEETING, AND
POSTED TO
THE WEBSITE
OCTOBER 9,
2014 UNDER
'DRAFT
DOCUMENTS'**

concerning the study and explained the basis for the interim zoning which was available on the website. He said there was not a lot of statute concerning the current issue faced by the county with the inter-local agreement area. They were in an unprecedented situation. They were doing the best they could by working with the county attorneys, the board with these workshops and attempting to do what the board desired by preparing information. He read and explained the first footnote on the options document staff had prepared and reiterated the document had been available to the public since it was created.

Grieve explained one of the concepts for option one which was if the interim zoning was allowed to expire, it went away. He continued to discuss in depth what was left in the area if zoning went away, the history of previous zoning in the area, what the county was and was not able to do concerning adopting part three zoning and what the repercussions were if the interim zoning was allowed to expire.

Grieve said all of the options could be challenged because this was a contentious issue. What staff relied on concerning statute for the options was their research of the statutes which do apply and logic it through based on the county's position of what seemed reasonable.

Grieve said staff had not spoken with Dan Grave with Whitefish Mountain Resort in the last month or two. Whitefish Mountain Resort did have a county adopted plan which was an overall development plan for that area. It was adopted by the county in approximately 2003. He went on to state what was included in the plan. He did not know if it was the most recent Whitefish adopted document. When the jurisdiction appeared to be returning to the county in 2008 or 2011, Whitefish Mountain Resort approached the county and reminded them they did have a development plan adopted by the county. At that time the overall development plan was acceptable to them. If the interim zoning expired, things which were adopted by the county in the past would be able to remain. He gave examples of zoning districts which were adopted by the county and places where zoning was a question mark.

Larsen asked Grieve to answer the concern about compatibility with Whitefish.

Grieve and the board discussed and clarified the question about compatibility with zoning in Whitefish and the county's obligation to work in a cooperative manner with Whitefish.

Stevens view was there was the Whitefish City Planning Director and a member of the Whitefish Planning Board present, which he assumed would relay information to the Mayor and Councilmen. The Mayor and Councilmen were welcome to attend the workshop but they were not in attendance.

Norton asked to be recognized.

Larsen said they were not in that part of the workshop. Public comment would be at the end of the discussion.

Grieve read MCA 76.2.203 concerning the criteria guideline for part two zoning concerning compatible urban growth within the vicinity of cities and towns and areas around municipalities and zoning compatibility. He explained the different ways the MCA criteria could be interpreted and quoted information from the Growth Policy which supported working with the city. There was an administrative practicality where not everything which was done could be run by the city of Whitefish first, but there were ways to coordinate with them.

Calaway and Grieve discussed the map which coordinated zoning between the former Whitefish zoning and the interim zoning and if that eliminated several of the problems. They also discussed the different options which concerned the interim zoning, the details of part two zoning and what needed to be done to establish part two zoning in the area.

Grieve gave examples of where there were no compatible zoning with Whitefish zones.

Stevens said it was important that the zoning be compatible with the city of Whitefish. The statute didn't say the zoning had to be identical, just compatible. The dilemma was Flathead County could not administer or enforce municipal zoning.

Calaway said that referred back to non-conforming uses.

The board and Grieve discussed the issue of compatibility with Whitefish, the two parts of the Growth Policy which were the text and map and the guidelines which were general not parcel

specific.

Stevens said the dilemma was the plan was a guide not a zoning document, they had to remain compatible and cooperate with Whitefish. He hoped there were lines of communication between the city and county. The land owners in this area did not feel that they were being heard and the regulations should have a good reflection of what the property owners wanted to do with their property, not what his neighbors in the city limits wanted them to do with their property. That was the hurdles and dilemmas the board had to deal with concerning this issue.

Shellerud and Grieve discussed the interim zoning being based on Whitefish zoning that was in place at the end of Whitefish's jurisdiction and how staff came up with interim zoning.

Shellerud raised the question for discussion of what would happen if the 2007 Growth Policy was adopted. The board directed staff to do a one on one correlation with the zones as best they could, and then created special zoning classifications for special areas where there was no correlation between the Whitefish zone and an existing county zone to create compatibility.

Bodman asked Grieve to relay the complaints about zoning Grieve had heard from former donut residents.

Grieve said he had the 2007 Whitefish Growth Policy and the Whitefish Zoning regulations as they currently exist. He explained the similarities between the county zoning regulations and the Whitefish zoning regulations and the differences which included special provisions (ordinances). He referred to the special provision for water quality protection, the dark skies ordinance, and several other examples. Some of the special provisions which were adopted into the Whitefish zoning regulations were reasons for complaints from residents of the former donut.

Bodman asked if the county were to adopt the 2007 policy and the zoning regulations Whitefish had in place as nearly possible considering the restraints on the county, which would pull out the home rules derived regulations, what was left that Grieve was hearing complaints about.

Grieve said they did not hear a lot of complaints about permitted uses, conditional uses and bulk and dimensional requirements. The complaints may have been out there, but in the day to day interactions with the office where complaints were heard it was with the provisions section. He gave examples of permits which were required for various reasons.

Stevens and Grieve discussed if there were issues with the way people were zoned and the people did not raise those issues with the county since they were not under their jurisdiction.

Bodman said the interim zoning in place was essentially what he was talking about. Essentially, the county had taken the Whitefish Zoning Regulations and pulled out all the home ruled derived regulations.

Grieve said the two special zonings the county had adopted, RR-1 and the BSD, was essentially what Bodman was describing. He explained further. He wanted to point out the 2007 Whitefish Growth Policy also had controversy for the rural land owners. The most controversial part of the policy was the infill provision and he summarized the provision. He went on to name other policies which were not without controversy for rural land owners.

Bodman and Grieve discussed if the Planning Office had received any complaints about the interim zoning and what the complaints were. The complainants included landowners who indicated the previous Whitefish zoning and now the interim zoning was not appropriate for their property and what would be appropriate. Staff suggested the complainants attend the workshops or write written comment concerning what they wished to have their property zoned.

Grieve said there were a half dozen to a dozen people who had contacted the office concerning their zoning.

Callaway relayed how the people in the county wanted to not be zoned or have controls on their property. He said if they brought out a map all the people would put on the map what they wanted their property zoned. He had seen it done in Bigfork.

Heim and Grieve discussed if there was any way to adopt the 2007 Whitefish Growth Policy zoning. They discussed what it would take to replace the interim zoning with permanent zoning.

Grieve summarized what it took to lay out a growth policy, what was needed to update growth policies, and what was needed to create a new neighborhood plan. He continued to summarize the different plans and what the processes would look like.

Heim and Grieve discussed what routes would be possible considering the time constraints.

The only option Grieve stated he was not fond of was starting over from scratch and he went on to explain why.

Calaway and Grieve discussed if doing a neighborhood plan was an option, what the Whitefish City-County Master plan was and what review of the plan would be and if the '96 plan could be replaced by a neighborhood plan. They also discussed geography specific zones, if those could apply to the rest of the county, the possibilities of the zones concerning the Whitefish area, the non-conforming uses which might arise and criteria for zoning regulations.

The board and Grieve discussed what would happen if they added new zoning designations with new names and if it was a possibility.

Grieve explained what non-regulatory and regulatory meant, what the proper procedure was, how to decide what would be the least disruptive for the land owners in the former donut and what step the board was on in the process for reviewing a plan.

The board and Grieve discussed the option of getting rid of the '96 plan (option 1A), if the interim zoning needed to expire to do permanent zoning with the Growth Policy and what happened with joint plans. They also debated if the Growth Policy covered the former donut, what would happen if the '96 plan was rescinded, zoning districts based on a neighborhood plan or not based on a neighborhood plan and the compatibility issue. They discussed what policy they needed in place, how to accomplish that and work with zoning and how to gain more time for the process. They continued to discuss what would be needed to work on the 2007 plan, when the current Growth Policy was adopted and updated, the statute for reviewing the policy, the two timelines of the expiration of interim zoning and the Growth Policy update. They continued to discuss options for rescinding the '96 plan, using the Growth Policy as the document and using

the Whitefish Future Land Use Map. The board asked to see that option on the options list.

Calaway said some of the options had been eliminated in his opinion.

The board discussed leaving the options list as is and the use of workshops to narrow down the list.

Grieve and the board discussed in depth what was needed to add the discussed option to the list.

Grieve reviewed the process for a new plan versus an existing plan and explained the process of what would happen if the plan around Whitefish fell into the category of a local land use plan which was adopted under part two of a plan that may be appended to the Growth Policy. He was pointing out there were two options where there might be a five year build out plan for the best process for engaging the public and involves the public for a plan such as the one being conceptualized at this point. He explained his reasons for his statement.

**DISCUSSION OF
FUTURE
PUBLIC
WORKSHOPS
AND
NOTIFICATION
METHODS**

Grieve said the board had mentioned at the last workshop the desire for some type of notification for the residents of the former donut area and holding meetings around the area of Whitefish. He explained how the office currently noticed the workshops and reviewed alternative notification methods. He asked for input as to where to hold the meetings.

Stevens said the people in the area wanted to be part of the county and the county met in these conference rooms. Whitefish was not that difficult to get to Kalispell from. He gave examples of other plans where people had traveled to Kalispell to give comment.

Heim relayed a previous meeting years ago in Whitefish and the amount of people who had attended.

Larsen, Heim and Grieve discussed what the topic of the meeting was, which was the possibility of the county taking over the donut area in approximately 2008.

Heim agreed with Stevens about people traveling to Kalispell for the meeting.

Larsen suggested two meetings so people had an option if they could not attend one night. He could travel to Whitefish but also understood what Stevens said. He recounted projects where meetings were held in different areas besides Kalispell.

Bodman said he distinguished between a meeting and a workshop. A meeting was county business and held in Kalispell and a workshop to receive input could be held in different parts of the county. It did not make a difference to him where the meeting would be held.

The board and Grieve discussed how many people might attend, where would be the best place to hold a public workshop concerning the Whitefish transition and what the timelines would look like. The board decided to hold the workshops on October 29 and October 30, 2014 at the Flathead County Fairgrounds with one mailing with appropriate information to affected people in the former donut area. The postcards would be mailed on Wednesday October 22, 2014 with a postcard sent to the members of the board.

**PUBLIC
COMMENT**

Karen Reeves, 230 Missy Lane, clarified not all the residents in the donut area were looking forward to having the county take over jurisdiction. One of the reasons was they did not want to drive down to Kalispell for meetings. She said if the board wanted public participation it was important to meet the public. It was onerous to drive down to Kalispell and people would not make the trip. She raised questions about who received a postcard about the meetings and who would be allowed to attend the meetings. She recounted meetings for the North Fork and the benefits of holding the meetings closer to the affected area. She worried there would be people who attended who would not know the ramifications legally between the '96 plan and the Growth Policy. There would be a learning curve. She asked how that would be handled. She wanted to make sure people were heard. She thought having more meetings in the Whitefish area would be great.

Rebecca Norton, 530 Scott Ave, said she was at the workshop as a citizen, not as a representative of Whitefish. She had been on several boards and had recently been appointed to the Whitefish Planning Board. She felt the public process was sacred and it should be fair and transparent. What happened in Whitefish was one of the most unethical things she had been through. She attended the meetings because she was deeply upset about what

had happened. She did not think the board was aware of why the city created what they were entitled to create, which were their own laws which govern the health and safety of their citizens. She went on to give examples of those laws and their reasons. She wanted the board to obtain background information about what created this situation. She gave examples of what she thought the board should read to better inform them. When the board said they represented the county residents, there were numerous county residents who were against the county obtaining jurisdiction over the donut area and were concerned about the future. The board needed to take their opinions into their decision making as well. They were not there to represent the people who were very forceful in taking back the donut. She wanted them to remember there was more than one way to think about the donut situation. She thought personal property rights should also be respectful of neighbors, not just what the property owner wanted to do. The community a person lived in was just as important as the person. She did not want destructive or mean processes in her town. She explained the front loaded water quality act which had been the critical areas ordinance. She did not know how to educate the board on what had actually transpired because it seemed to her that was not any part of the discussion. If they did not know how they got here or what the laws were actually designed to do, how could they take them away in the planning jurisdiction. She asked the board if she should write up something for them on the history. They were still moving forward because that was what they were legally mandated to do but they were still responsible for protecting the citizens of Whitefish. She was not in attendance to speak for anyone but herself. She appreciated the board's thoughtfulness on this situation. She thought they had done a nice job on coming up with a solution. If the meetings were in Whitefish they would get a better turnout.

Charles Davis, 205 Barnes Lane, wanted to support the board's public notification process. He wanted to suggest, given the limited time before the first meeting, to look for a way for those who were uncomfortable with public speaking be able to provide their thoughts during the meeting so everyone would have an opportunity to have their comments before the board. He did not care where the meetings were held.

Mayre Flowers, Citizens for a Better Flathead, said having sat through two hours of discussion about what the options document was and the ramifications were that there were two

things that needed to take place. One was the board needed to take a longer time before they scheduled the meetings. The week of October 29 and 30 was Halloween week and difficult for families to attend. The elections were on the fourth of November. The board had picked two really busy times to hold the meetings. She encouraged the board to look two weeks beyond the first week in November before Thanksgiving. She explained the benefits of having more time before the meetings. She felt maps which reflected the options would be beneficial. She encouraged them to consider a workshop format that was a question and answer format. She explained the difficulties of uninformed comments during a public comment period. Perhaps these two meetings should be to inform the public then the options of adding an additional public comment period. She was concerned about the process, mailing and the distribution and notice needed when amending the Growth Policy. Option one was problematic because the board was not allowed to use interim zoning to eliminate zoning but to meet the legal responsibility to put in place appropriate zoning. She thought option one needed to be totally redesigned so that it was not based on the principle of allowing interim zoning to expire. She thought that was not a legally viable option. She was also concerned about the option of adopting another plan. When zoning was adopted it had to be based on a plan. She did not think adopting a plan met the level of requirement needed on a Growth Policy or neighborhood plan. She would like to see that possibility fleshed out a lot more concerning the legal viability.

Ray Halloran, 475 North Main, said the question and answer concept was nice but he understood the difficulties of it. Some of the options sounded similar to him and he explained further.

Grieve said the written comments which were received after the last workshop were before the board tonight.

ADJOURNMENT The workshop was adjourned at approximately 8:15 pm.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 11 / 12 / 14*